

KNOW YOUR RIGHTS

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Unit Owner Rights in CICs



Nevada Real Estate Division

Presented by the Training Officer; Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels Program

Introduction

- Though the executive board acts on behalf of the association in accordance with the governing documents and applicable law, unit owners have several rights pursuant to NRS 116 that must be upheld.

Resale Package

NRS 116.4109

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- Each new unit owner who purchases into the community should receive a resale package containing:
 - A copy of the declaration (CC&Rs), bylaws, rules and regulations
 - The monthly assessment
 - A copy of the current operating budget and current year-to-date financial statement
 - A statement of any unsatisfied judgments or pending legal actions against the association and any past due amounts owed by the seller
 - A statement of any transfer fees, transaction fees, or any other fees associated with the resale of a unit
 - The fine/fee schedule and collection policy
 - A summary of the study of the reserves



Declared Rights

- The recorded declaration and bylaws are a legal description of all rights, obligations and interests belonging to a unit.
- Subject to the declaration and any rules adopted by the association, unit owners have a right to use common elements for the purposes for which they were intended.



Amendment Rights

NRS 116.2117

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- The declaration may be amended only by vote or agreement of a majority (or any other percentage stated in the declaration) of unit owners.
- To protect the rights of unit owners during the amendment process, the following must be taken into account:
 - What notices and materials were used in the effort to persuade unit owners to approve the amendment?
 - How were votes obtained?
 - How much time was provided to unit owners to vote?
 - How were votes counted?
- Not later than 30 days after the amendment is recorded, the association shall mail to all unit owners a copy of the final amendment.
- No action to challenge the validity of an amendment may be brought more than one (1) year after the amendment is recorded.



Renting Rights

NRS 116.335

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- Unless at the time a unit owner purchased his or her unit the declaration prohibited the owner from renting or leasing, or required the owner to obtain approval to rent or lease, the association may NOT prohibit or require such from **that** owner.
- If a declaration contains a provision establishing a maximum number or percentage of units which may be rented or leased, that provision may NOT be amended to **decrease** that maximum percentage.
- If the governing documents of an association require a unit owner or tenant to register with the association or submit information concerning the lease or rental agreement, the association may **NOT** charge a fee.

Right to Display Flag

NRS 116.320

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- The executive board and governing documents shall not prohibit a unit's owner from engaging in the display of the flag of the United States or of the State of Nevada.
- This provision does not:
 - Apply to the display of the flag of the United States or of the State of Nevada for commercial advertising purposes.
 - Preclude an association from adopting, and do not preclude the governing documents of an association from setting forth, rules that reasonably restrict the placement and manner of the display of the by a unit's owner.
- In any action commenced to enforce the provisions of this section, the prevailing party is entitled to recover reasonable attorney's fees and costs.
- ...“display of the flag of the United States or of the State of Nevada” means a flag of the United States or of the State of Nevada that is:
 - Made of cloth, fabric or paper;
 - Displayed from a pole or staff or in a window;
 - With regard to a flag of the United States, displayed in a manner that is consistent with 4 U.S.C. Chapter 1; and
 - With regard to a flag of the State of Nevada, not larger than the size of a flag of the United States that is displayed.
 - The term does not include a depiction or emblem of the flag that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component.

Right to Exhibit Political Signs

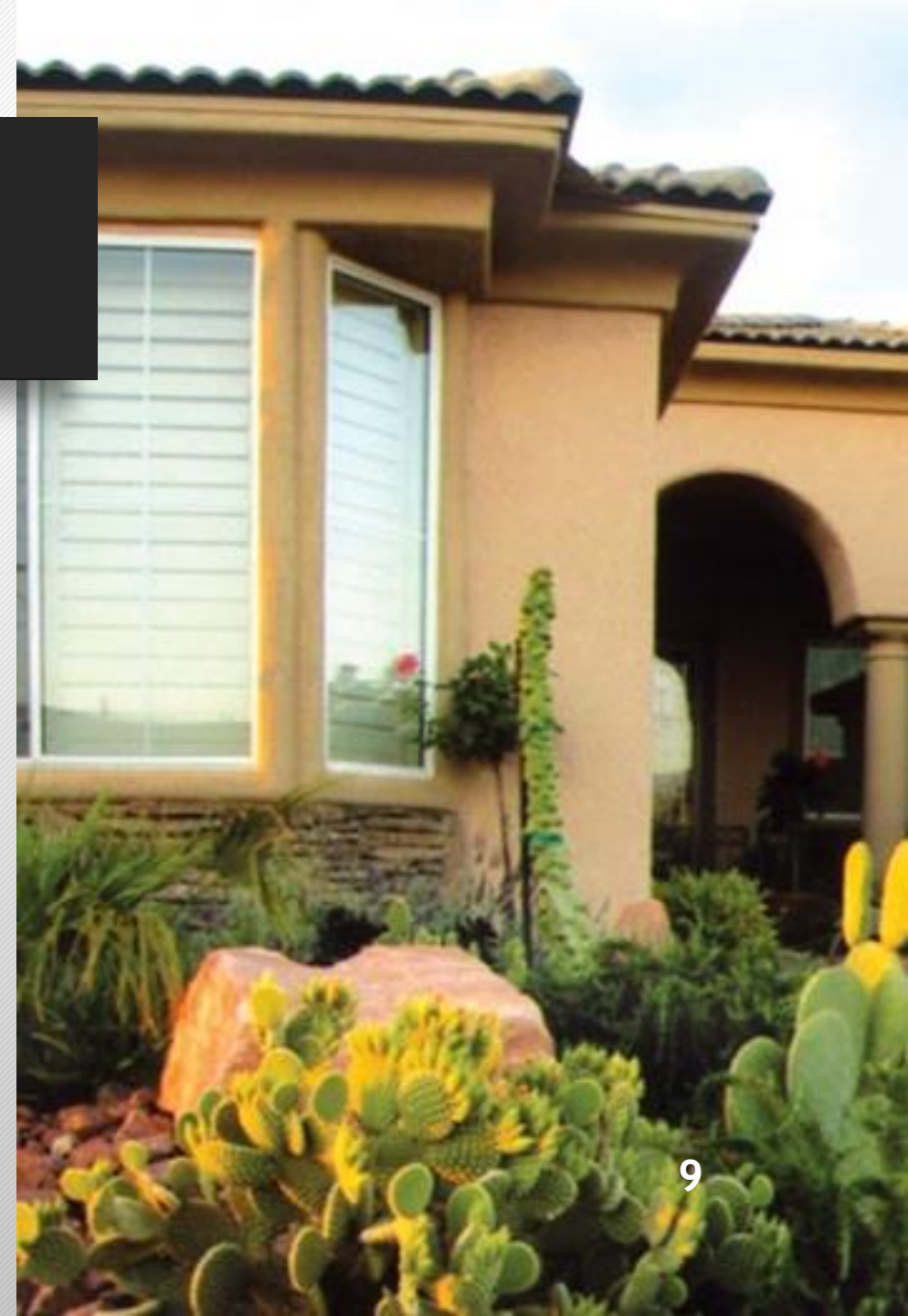
NRS 116.325

- The executive board and governing documents must not prohibit a unit's owner or an occupant from exhibiting one or more political signs, subject to the following conditions:
 - All political signs exhibited must not be larger than 24 inches by 36 inches.
 - If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.
 - All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.
 - A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.
- ...“political sign” means a sign that expresses support for or opposition to a candidate, political party or ballot question in any federal, state or local election or any election of an association.

Right to Install Drought Tolerant Landscaping

NRS 116.330

- The executive board and governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping in their front yard or back yard, except that:
 - **Before** installing drought tolerant landscaping, the unit's owner must submit an ARC request in accordance with the procedures, if any, set forth in the governing documents of the association; and
 - The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the CIC.
 - The provisions of this subsection must be construed as encouraging the use of drought tolerant landscaping, and the executive board and governing documents must not unreasonably deny or withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the CIC.
- As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions.



Right to Store Solid Waste Containers

NRS 116.332

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- An association may not regulate or restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service.
- An association may adopt rules, in accordance with the procedures set forth in the governing documents, that reasonably restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service during the time the containers are **not** within the collection area. The rules adopted by the association must:
 - Comply with all applicable codes and regulations; and
 - Allow the unit's owner, or a tenant of the unit's owner, to store containers for the collection of solid waste or recyclable materials outside any building or garage.

Solid Waste Containers, Cont'd

NRS 116.332

- The rules adopted by an association may:
 - Provide that the containers for the collection of solid waste or recyclable materials must be stored in the rear or side yard of the unit, if such locations exist, and in such a manner that the containers are screened from view from the street, a sidewalk or any adjacent property; and
 - Include rules prescribing the size, location, color and material of any device, structure or item used to screen containers for the collection of solid waste or recyclable materials from view and the manner of attachment of the device, structure or item to the structure on the premises where the containers are stored.



Solid Waste Containers, Cont'd

NRS 116.332

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- An association may adopt rules that reasonably restrict the conditions under which containers for the collection of solid waste or recyclable materials are placed in the collection area, including, without limitation:
 - The boundaries of the collection area;
 - The time at which the containers may be placed in the collection area; and
 - The length of time for which the containers may be kept in the collection area.
- As used in this section:
 - “Collection area” means the area designated for the collection of the contents of containers for the collection of solid waste or recyclable materials.
 - “Curbside service” means the collection of solid waste or recyclable materials on an individual basis for each residential unit by an entity that is authorized to collect solid waste or recyclable materials.
 - “Recyclable material” has the meaning ascribed to it in [NRS 444A.013](#).
 - “Residential unit” means an attached or detached unit intended or designed to be occupied by one family.
 - “Solid waste” has the meaning ascribed to it in [NRS 444.490](#).

Rights Regarding Alterations of Units

NRS 116.2111

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- A unit's owner may not change the exterior appearance of a unit or the CIC, without permission of the association.
- An association may not:
 - Unreasonably restrict, prohibit or impede the lawful rights of a unit's owner to have reasonable access to their unit.
 - Charge any fee for a person providing services to a unit, a unit's owner, a tenant, visitor, or invitee to enter the CIC.
 - **Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:**
 - Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant who has a disability;
 - Additional locks to improve the security of the unit;
 - Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or
 - A system that uses wind energy to reduce the costs of energy if the boundaries of the unit encompass 2 acres or more.
 - Unreasonably restrict, prohibit or withhold approval for a unit's owner to add shutters to improve the security of the unit or to reduce the costs of energy for the unit if:
 - The portion of the window, door or wall to which the shutters are attached is adjoining the unit; and
 - The shutters must necessarily be attached to that portion of the window, door or wall during installation to achieve the maximum benefit in improving the security of the unit or reducing the costs of energy for the unit.
 - With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

Alterations of Units, Cont'd

NRS 116.2111

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- Any improvement or alteration made that is visible from any other portion of the CIC must be added in accordance with the procedures set forth in the governing documents of the association and must be compatible with the style of the CIC to the maximum extent practicable.

Capital Improvement Rights

NRS 116.345

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- To initiate a capital improvement (any new common element), the authority must be granted to the executive board in the governing documents of the association.
- If the authority is granted, the association may **NOT** construct the new element unless it was previously **disclosed** to unit owners in a meeting, where any additional money needed from unit owners to create the new element must be discussed.
- The association **MUST** obtain the **written consent** of a majority of unit owners and residents who own property or reside **within 500 feet** of the proposed location of the new structure.



Notice Rights

NRS 116.31068

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- An association shall deliver notices to a mailing or email address that a unit owner designates.
 - If a unit owner has not designated an email address, the association may deliver notices by hand delivery or newsletter, website, etc.
- The provisions of this section **DO NOT** apply to:
 - Elections of any kind
 - Budget summaries
 - Fee/Fine schedule and collection policies
 - Violation notices
 - Notice of Sale

Imposition of Sanctions

NRS 116.31031

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- To impose sanctions in accordance with NRS 116.31031, the governing documents must provide the association the authority to impose a fine, prohibit a unit owner from using the common elements, and/or restrict voting rights within the CIC.

Violation Notice

NRS 116.31031

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- The executive board may not impose a fine unless, at least 30 days before the alleged violation, the violator was provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation.
- The association must send notice of an alleged violation to the address of the unit and, if different, to a mailing address specified by the unit's owner before a fine may be imposed. This written notice must include:
 - In detail, the alleged violation
 - The provision being violated
 - A clear and detailed photograph of the alleged violation (when possible)
 - The proposed action to cure the alleged violation, with timeframe
 - The amount of the potential fine
 - A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.
- The executive board must schedule the date, time and location for the hearing on the alleged violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for and be present at the hearing.
- The executive board must hold a hearing before it may impose the fine.

Notice of Delinquency

NRS 116.31162

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- An association may not send to a unit owner a notice of delinquent assessment or take any other action to collect a past due obligation unless:
 - At least 60 days after the obligation becomes past due, the association mails or emails to the address on file:
 - A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;
 - A proposed repayment plan; and
 - A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.



Repayment Plan

NRS 116.31162

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➤ **IF:**

- Within **30 days** after the date on which the notice of delinquent assessment is mailed or delivered by electronic transmission, as applicable, the past due obligation has not been paid in full or the unit's owner or his or her successor in interest has not entered into a repayment plan or requested a hearing before the executive board; **or**
- The unit's owner or his or her successor in interest requests a hearing or enters into a repayment plan within 30 days after the date on which the notice of delinquent assessment is mailed or delivered by electronic transmission, as applicable, and is unsuccessful at the hearing or fails to make a payment under the repayment plan within 10 days after the due date.
- The association may take any lawful action pursuant to NRS 116.31162(1) to enforce its lien.

**YOUR ACCOUNT
IS PAST DUE.**

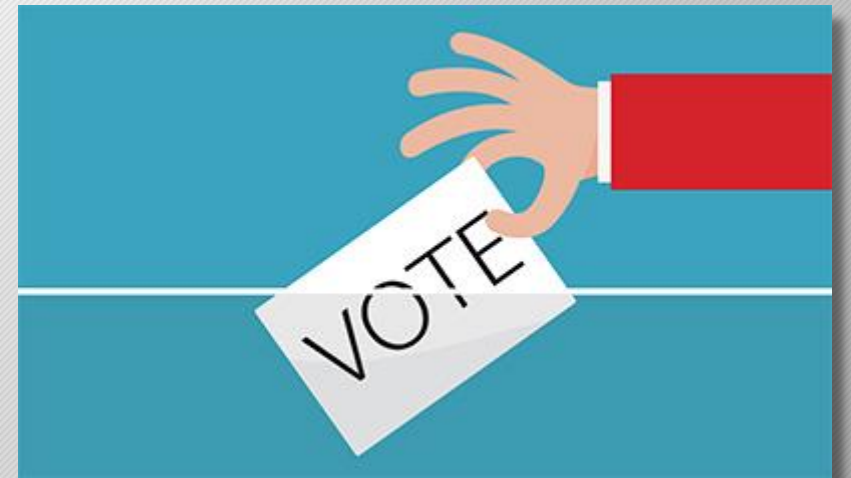
***We would appreciate
your payment today!***

Election Rights

NRS 116.31034

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- Unit owners shall elect an executive board of at least three members, all of whom must be unit owners (NRS 116.31034).
- All unit owners from all CICs subject to a master association may elect all or specified members of that master association's executive board (NRS 116.212).
- Election ballots must be opened and counted at the annual meeting of unit owners.



Campaigning Rights

NRS 116.31034(16) & 116.31035


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- A candidate may create, to have sent with the ballot, a single-page **candidate informational statement** to go out to each unit owner.
 - This statement cannot contain any defamatory information.
- If an **official publication of the association**:
 - contains any mention of a candidate, the official publication must, upon request, provide equal space to all candidates.
 - contains views or opinions concerning an issue of official interest, the official publication must, upon request, provide equal space to opposing views.
- “Official publication” means:
 - An official website;
 - An official newsletter or other similar publication that is circulated to each unit’s owner; or
 - An official bulletin board that is available to each unit’s owner.
- An association **shall not adopt any rule or regulation** that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate’s campaign for election, except that the candidate’s campaign may be limited to 90 days before the date that ballots are required to be returned to the association.

Right to Removal Election

NRS 116.31036

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- Any member of the executive board may be removed, with or without cause.
 - To call a removal election, unit owners must submit a written petition, signed by the required percentage (**10% or less**), mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association.
 - Secret written ballots for the removal election must be sent within **60 days** after the date on which the petition is received.
 - Within **90 days** after the petition was received, the executive board must hold the meeting to open and count the secret written ballots.
 - For removal to take place, at least **35%** of total voting members (take into account suspended voting rights) must vote **in favor** of removal, and votes cast in favor must also represent the majority of all votes cast.
-  The association **shall not adopt any rule or regulation** which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition.

Unit Owner's Meeting

NRS 116.3108

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- A unit owner meeting must be held at least once each year at a time and place stated in the bylaws.
- **15 to 60** days in advance of the meeting, notice must be sent.
- Notice must state the time and place of the meeting and include a copy of the agenda consisting of:
 - A clear and complete statement of the topics scheduled to be considered (unit owners can have input).
 - A list describing the items on which action may be taken.
 - A period devoted to comments by units' owners and discussion of those comments.
- Notice must include notification of the right of a unit's owner to have a copy of the minutes or a summary of the minutes upon request, in electronic format at no charge, or in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

Budget Rights

NRS 116.31151

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- The board adopts a budget each year.
- Within **60 days** after adoption, the executive board shall provide a summary to each unit owner; budget summaries **must be mailed no less than 30 or more than 60 days** before the beginning of the association's fiscal year.
- Unit owners will have between **14 and 30 days** to review the proposed budget before ratifying it at the **annual unit owner's meeting**.
- Unless a majority of **all unit owners**, or any **larger vote** specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present.

Board Meeting

NRS 116.31083

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- A meeting of the executive board must be held at least once every quarter, not less than once every 100 days, and **must be held at a time other than during standard business hours at least twice annually.**
- Except in an emergency, notice must be provided **not less than 10 days** before the date of a meeting of the executive board.
- Notice of the meeting must state the time and place and include a copy of the agenda **or the date and locations where copies of the agenda may be conveniently obtained.**
- The notice must include notification of the **right of a unit's owner** to have a copy of the audio recording, minutes, or a summary of the minutes upon request.
- A period devoted to **comments by the units' owners and discussion** of those comments must be scheduled for both the beginning and end of each meeting (limited to agenda at the beginning). Time to speak may be limited.

Right to Speak

NRS 116.31085

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- A unit owner may attend any meeting of the executive board and speak at any such meeting (other than executive session) within reasonable time limitations as determined by the board.
- An executive board may not meet in executive session to open or consider bids for an association project or to enter into, renew, modify, terminate or take any other action regarding a contract.
- An executive board shall meet in executive session to hold a hearing on an alleged violation.
 - If the unit owner requests in writing that an open hearing be conducted, he or she is entitled to an open hearing. The unit owner has the right to present witnesses and be represented by council.

Right to a Special Meeting

NRS 116.3108

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- Unit owners constituting **at least 10%**, or any **lower** percentage specified in the bylaws, can request that the secretary call a special meeting to address a specific matter.
- This request must be in the form of a written petition, signed by the required percentage of unit owners, mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association.
- The executive board shall set the date for the special meeting so that it is held not less than **15 days** or **more than 60 days** after the date on which the petition is received (10 day notice requirement remains).

Civil Action Rights

NRS 116.31088

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- The association shall provide written notice to each unit owner of a meeting at which the commencement of a civil action is to be considered at least **21 calendar days** before the date of that meeting.
 - The association may commence a civil action only upon a vote or written agreement of a majority of unit owners.
 - If a civil action is commenced without the required vote or agreement, the action must be ratified within **90 days by a majority of unit owners**.
- At least **10 days** before the vote, the association shall provide a written statement to all unit owners that includes a reasonable estimate of the costs, including attorney's fees, and an explanation of the potential benefits or consequences if the action is not taken.
- Approval is NOT required for a civil action that is commenced:
 - To enforce the regular business of the association (assessment payments, enforcement of governing documents, or enforce a contract with a vendor);
 - To proceed with a counterclaim; or
 - To protect the health, safety and welfare of members of the association
- If and when applicable, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting.

Right to Have Complaint on Agenda

NRS 116.31087

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- If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of NRS 116 or the governing documents, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the next regular agenda.
- The unit owner shall be notified that the complaint was received and that the board will act accordingly within 10 business days.

Right to Complain

NRS 116.760

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- A person who is aggrieved by an alleged violation must file a complaint with the Division within one (1) year following discovery.
- A written affidavit filed with the Division must be on form 530 (intervention affidavit) and accompanied by evidence that the aggrieved person has provided the respondent, by certified mail, return receipt requested, written notice of the alleged violation and a reasonable opportunity to cure.
- Evidence substantiating the allegations listed on the form must be included when filing.

Right to File an ADR Claim

NRS 38.300 - 38.360

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- All unit owners, even if they have no intention of filing civil action in court, may use the Alternative Dispute Resolution (ADR) process.
- ADR claims require a \$50 filing fee and must be submitted within one (1) year following discovery to be eligible for subsidy.
- Matters subject to ADR include:
 - A dispute arising from the interpretation, application or enforcement of any covenants, conditions or restrictions (CC&Rs) or any other governing documents applicable to residential property; or
 - A dispute involving the procedure used for increasing, decreasing or imposing additional assessments upon residential property.
- The Division will not move forward investigating an intervention affidavit if an ADR claim is filed involving the same matter (NAC 116.630).

Right to Records

NRS 116.3118

33

- The association shall keep financial records sufficiently detailed to comply with the requirements of a resale package.
- The executive board shall provide the following **within 21 days of a written request** from a unit's owner or the Ombudsman:
 - The financial statement of the association;
 - The budgets of the association; and
 - The study of the reserves of the association.
- All financial and other records of the association must be maintained and made available for inspection, examination, review, photocopy, and audit by any unit's owner and his/her authorized agent(s).

Right to Surplus Funds

NRS 116.3114

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- **Unless otherwise provided in the declaration**, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to unit owners in proportion to their liabilities or credited to them to reduce future assessments (vacation in assessments).

Assessment Rights

NRS 116.3115

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- Any common expense benefiting fewer than all unit owners may be assessed exclusively against the units or unit owners benefiting from that common element.
- If damage to a unit or other part of the community is caused by the willful misconduct or gross negligence of any unit owner, tenant or invitee, the association may assess that expense exclusively against his or her unit.

Right to Terminate

NRS 116.2118

36

- A common-interest community may be terminated only by agreement of unit owners to whom at least 80 % of the votes in the association are allocated, or any larger percentage the declaration specifies (could be unanimous).

Right to Not be Retaliated Against

NRS 116.31183

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- An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:
 - Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;
 - Recommended the selection or replacement of an attorney, community manager or vendor; or
 - Requested in good faith to review the books, records or other papers of the association.
- In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:
 - Compensatory damages; and
 - Attorney's fees and costs of bringing the separate action.

Right to Participate

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THE LARGE TURNOUT AT THE OPEN MEETING
HAD THE BOARD A LITTLE NERVOUS

Summary

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- Unit owners have the right to:
 - Approve any amendments to the CC&Rs
 - Approve certain litigation
 - Be heard regarding capital improvements
 - Know how association money is being used
 - Ratify the association's budget each year
 - Run for the board
 - Elect and potentially recall/remove directors
 - Attend, speak and vote at certain meetings
 - Receive and review records of the association
 - Receive notices regarding meetings and association business
 - Attend hearings
 - NOT be retaliated against
 - Have rules and restrictions enforced uniformly

Questions?

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- <http://red.nv.gov/> - Main Page
- CICOmbudsman@red.nv.gov - Email Questions
- http://red.nv.gov/Content/CIC/Program_Training/